

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHERITA HOBSON,

Defendant-Appellant.

UNPUBLISHED

December 18, 2001

No. 222685

Wayne Circuit Court

LC No. 98-012811

Before: Cooper, P.J., and Cavanagh and Markey, JJ.

PER CURIAM.

Defendant appeals as of right from her bench trial conviction for resisting and obstructing an officer in the discharge of duties, MCL 750.479. Defendant was sentenced to six months' probation and fined \$500. Upon payment of the fine, probation would terminate. We affirm.

Defendant first argues that the trial court erred in denying her motion for directed verdict and ultimately convicting her of resisting arrest. Specifically, defendant claims that the arrest leading up to her conviction was unlawful because it violated her First Amendment right to free speech. US Const, Am I. We disagree. "The test for determining the sufficiency of evidence in a criminal case is whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt." *People v Nowak*, 462 Mich 392, 399; 614 NW2d 78 (2000).

A necessary element of resisting arrest is the lawfulness of the arrest. *People v Wess*, 235 Mich App 241, 243-244; 597 NW2d 215 (1999). Defendant was arrested for disorderly conduct because she was yelling and using profanities in the public areas of a police station, thereby disrupting the general public present at the station and several officers that were attempting to perform their duties. Defendant was repeatedly asked to refrain from the usage of profanities or leave the premises but she refused.

While it appears in the present case that defendant was properly arrested for disorderly conduct, the question remains whether her First Amendment right to free speech was violated. Therefore, to determine whether defendant was lawfully arrested we must decide if her speech enjoys constitutional protection.

The First Amendment does not provide absolute protection for all forms of speech. For example, speech that is obscene, defamatory, or in a category known as "fighting words" is

devoid of constitutional protection. *R A V v St Paul*, 505 US 377, 383; 112 S Ct 2538; 120 L Ed 2d 305 (1992). “Fighting words” have been defined as words “which by their very utterance inflict injury or tend to incite an immediate breach of the peace.” *Chaplinsky v New Hampshire*, 315 US 568, 572; 62 S Ct 766; 86 L Ed 1031 (1942). However, it is not the message that can be proscribed, but rather the conduct that “fighting words” incite. *R A V, supra* at 385.

In this case, the record shows that defendant loudly yelled profanities in a public place and caused several police officers to stop what they were doing in order to defuse the situation. Clearly, the manner in which defendant made these statements led to a breach of the peace and impeded the right of others to pursue their lawful activities. See *Oak Park v Smith*, 79 Mich App 757, 762; 262 NW2d 900 (1977).

Defendant further claims that the trial court abused its discretion by excluding a portion of defense witness Timeka Hobson’s testimony as hearsay. We disagree. A trial court’s decision regarding the admissibility of evidence is reviewed for an abuse of discretion. *People v Crear*, 242 Mich App 158, 169; 618 NW2d 91 (2000).

During direct examination, Timeka Hobson began to testify about statements that Officer Clark made to defendant when he entered the police station. Defendant argues that this testimony was admissible under the excited utterance exception to the hearsay rule. MRE 803(2). In order for testimony to be introduced under the excited utterance exception the following requirements must be met: (1) the statement must arise from a startling event; (2) there must be no time for contrivance or misrepresentation by the declarant at the time the statement is made; and (3) it must relate to the circumstances of the startling event. *People v Jensen*, 222 Mich App 575, 581-582; 564 NW2d 192 (1997).

In the instant case, there is no indication that Officer Clark’s statements were made while he was under the stress of a startling event. Defendant’s argument on appeal that Officer Clark was excited because of the arrest of defendant’s sister for failure to present a driver’s license is without merit. In fact, defendant has failed to demonstrate any relation between this “startling event” and Officer Clark’s alleged statements to defendant at the police station. Accordingly, the trial court did not abuse its discretion by excluding this evidence.

Affirmed.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ Jane E. Markey